

## INTRODUCTION

On August 3, 2017, at approximately 4:30 AM, at Holstein Park, 2200 North Oakley Avenue Chicago, IL, Police Officer (“PO”) 1, Star # XXXXX, allegedly slapped complainant Subject 1 in the head during arrest. COPA is investigating this allegation<sup>1</sup>.

## ALLEGATIONS

It is alleged that on August 3, 2017, at approximately 4:30 AM, at Holstein Park, 2200 North Oakley Avenue Chicago, IL, the accused, Officer A, Star # XXXXX;

1. Slapped complainant Subject 1 in the head during arrest.
2. Failed to properly document all physical contact made with arrestee Subject 1 in a Tactical Response Report (TRR).

It is alleged that on August 3, 2017, at approximately 4:30 AM, at Holstein Park, 2200 North Oakley Avenue Chicago, IL, the accused, Officer 2, Star # XXXXX;

1. Deactivated her Body Worn Camera during the incident.

It is alleged that on August 3, 2017, at approximately 4:30 AM, at Holstein Park, 2200 North Oakley Avenue Chicago, IL, the accused, Officer 3, Star # XXXXX;

1. Failed to report the misconduct of Officer A, Star XXXXX, which she witnessed during the arrest of Subject 1.
2. Failed to activate her Body Worn Camera on August 3, 2017 at 4:32 AM, at 2200 N. Oakley Ave.

## APPLICABLE RULES AND LAWS

- Rule 2:** Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3:** Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
- Rule 6:** Disobedience of an order or directive, whether written or oral.
- Rule 8:** Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9:** Engaging in an unjustified verbal or physical altercation with any person, while on or off duty.

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<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

**Rule 22:** Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.

<b>S03-14</b>	Body Worn Cameras
<b>G03-02</b>	Use of Force Guidelines
<b>G03-02-01</b>	The Use of Force Model
<b>G03-02-02</b>	Force Options
<b>G03-02-04</b>	CLEAR Automated Tactical Response Report
<b>G03-02-05</b>	Incidents Requiring the Completion of a Tactical Response

## INVESTIGATION

On August 24, 2017, complainant Subject 1 (“Subject 1”), reported to IPRA for an in-person interview. Subject 1 related on August 3, 2017 he was arrested at a public swimming pool. Subject 1 said he was with Civilian 1, now known to be Civilian 1 (“Civilian 1”), and two females, now known to be Civilian 2 (“Civilian 2”) and Civilian 3 (“Civilian 3”). Subject 1 stated they saw the police come when they were skinny dipping after hours and the police asked them “really nicely” to get out of the pool. Subject 1 said he believes there were four officers at the scene.

Subject 1 related he was texting his mom when one of the female officers said, “stop recording,” to which Subject 1 told her “I’m not recording but I have a right to record.” Subject 1 said at this time PO “Officer A” (now known to be Officer A) intervened calling Subject 1 “a fucking idiot” to which Subject 1 responded, “talk to me with respect, I’m a fucking man.” Subject 1 related that Officer A reported on the police report that Subject 1 had “lunged at him with my hat.” Subject 1 said when he allegedly lunged at Officer A, Officer A smacked him in the face. Subject 1 then denied lunging at Officer A. Subject 1 said Officer A put him into the car with Subject 1’s feet hanging out and Officer A slammed his feet in the door three times. Subject 1 said Officer A pushed him into the squad car by his throat, choking him. Subject 1 said he sustained small scratches to his nose and throat of which he has a picture. (Att. # 14)

On November 29, 2017, Officer 2, Star # XXXXX, reported to COPA for an in-person interview. Officer B said that on August 3, 2017 at approximately 4:30AM, she and her partner, Officer C, Star XXXXX, were dispatched to a call of a criminal trespass at Holstein Park, 2200 N. Oakley Avenue and she saw two males, now known to be Subject 1 (“Subject 1”) and Civilian 1 (“Civilian 1”), and two females, now known to be Civilian 2 (“Civilian 2”) and Civilian 3 (“Civilian 3”). POs 1, Star #XXXXX, and Officer 4, Star #XXXXX, as well as Sergeant A, Star #XXX, were also on scene.

Officer B related that Subject 1 was answering the questions directed by officers to the subjects, Officer B said Subject 1 seemed to be the group leader. Officer B also said that Subject 1 immediately had an attitude. Officer B related that Officer A and Subject 1 were arguing. Officer B related her back was to Officer A and Subject 1 as she was explaining the ticket and Civilian 2’s options to Civilian 2. Officer B related that Subject 1 and Officer A’s arguing escalated and as she turned around, she saw Subject 1 was already in handcuffs. PO Officer 2 said she did not see Officer A hit Subject 1. Officer B related that she and Officer A walked Subject 1 to POs 1 and 4’s vehicle for transport and that Subject 1 was combative

and yelling. Officer B recalled Subject 1 stiffening his body when Officer A was trying to put him in the car to which Officer A responded by a two-handed push to put Subject 1 into the back of the transport car. Officer B related that Officer A did not use any other control tactics to gain compliance. Officer B related that she did not recall the verbal commands Officer A gave Subject 1. Officer B related Subject 1 continued to yell when he was in the police vehicle. Officer B related that back at District 14 lockup, Subject 1 was very apologetic. (Att. # 27)

On January 10, 2018, Officer B reported to COPA for an additional in-person interview as an accused officer regarding the deactivation of her Body Worn Camera, mid-incident. Officer B related that she turned the body camera off because she believed the field investigation was complete. (Att. # 37)

On November 30, 2017, **Officer 3, Star # XXXXX, reported to COPA for an in-person interview.** Officer C related she and Officer B responded to a call of criminal trespass at Holstein Park at approximately 4:30 AM on August 3, 2017 with POs 1, Star #XXXXXX, and Officer 4, Star #XXXXXX, as well as Sergeant A, Star # XXXX. There she observed four individuals now known to be Subject 1 ("Subject 1") and Civilian 1 ("Civilian 1"), and two females, now known to be Civilian 2 ("Civilian 2") and Civilian 3 ("Civilian 3") in the pool area of the park. Officer C related she heard Officer 1 arguing with Subject 1 but cannot recall why they were arguing. Officer C related she went to assist Officer A with cuffing Subject 1. Officer C said Subject 1 complied with being cuffed. Officer C said she did not see 1 strike Subject 1. Officer C related she does not recall any threats or physical contact between Subject 1 and 1. Officer C related she does not recall seeing Officer A put Subject 1 into the vehicle. Officer C related the other three subjects were yelling "you don't have to do that" about Subject 1 being detained. (Att. # 26)

On January 10, 2018, Officer C reported to COPA for an additional in-person interview as an accused officer. Officer C related that her body camera was not working the night of the incident and she would provide paperwork to prove that. Officer C also related she did not recall seeing Officer A strike Subject 1 in the head. (Att. # 36)

On November 30, 2017, accused **Officer 1, Star #XXXXXX, reported to COPA for an in-person interview.** Officer A related on August 3, 2017 he responded to a call of criminal trespass at Holstein Park. Officer A related he observed four individuals in the secured pool area of Holstein Park. Officer A related he saw two subjects in the pool with no clothes on and two outside the pool putting their clothes on. Officer A related he's never seen any of the subjects before or had any interactions with any of them. Officer A said as the officers were writing the Administrative Notice of Violations ("ANOV"), he noticed Subject 1 ("Subject 1") was agitated. Officer A said he exchanged words with Subject 1 but does not recall what Subject 1 said to him but Officer A related he told Subject 1 that the officers were "trying to give them a break." Officer A said the officers were initially not going to give the subjects ANOV's but Subject 1 "kept bickering" so they decided to give them ANOVs.

Officer A related when he and Subject 1 were exchanging words, Officer A moved toward Subject 1 and Subject 1 moved toward him. Officer A related that he feared an imminent threat of battery from Subject 1 due to Subject 1's baseball hat coming into his personal space so Officer A related that he moved to remove Subject 1 hat with his right hand and accidentally struck Subject 1 in the left side of his head with an open hand. Officer A related he did not report this on the TRR. He stated that omission could either have been an "oversight" or because he was not intending to use an open-handed strike so he did not report it as an open-handed strike. Officer A related the strike was an accident. Officer A related he thought he

reported the strike on the OBR. Officer A said Subject 1 became extremely agitated and uncooperative after Officer A accidentally struck him so Officer A and Officer C placed him under arrest. Officer A related Subject 1 did not want to go into the vehicle to be transported to the district. Officer A related Subject 1 was stiffening up and Officer A related he told Subject 1 “don’t stiffen up, get in the car.” Officer A related he had to assist Subject 1 into the car by “guiding him into the car.”<sup>2</sup> Officer A related that while Subject 1 was in the car Subject 1 continued to yell “you’re fucked, my aunt works for Cook County, you’re fucked.” (Att. # 23)

On January 10, 2018, Officer A reported to COPA for an in-person interview for a second time regarding his failure to document the physical contact he had with Subject 1. Officer A stated that he stood by his previous statement regarding his failure to document the contact as an “oversight.” Officer A later stated that he believed the contact was not used while effecting an arrest and was not a “tactical” maneuver and therefore did not need to be documented. (Att. # 38 and 39)

On December 5, 2017, witness **Officer 4, Star #XXXX, reported to COPA for an in-person interview.** Officer D reported he responded to a “sex in the pool” call at Holstein Park. Officer D related that when he arrived at the Holstein Park pool, he observed PO’s Officer 3, Star #XXXXXX, and Officer 2, Star #XXXXXX, in conversation with four individuals, now known to be Subject 1 (“Subject 1”) and Civilian 1 (“Civilian 1”), Civilian 2 (“Civilian 2”) and Civilian 3 (“Civilian 3”), who were putting their clothes on. Officer D said that Subject 1 was “getting smart” by talking a lot and Subject 1 was “pissed off.” Officer D related that he was investigating one of the two female subjects who gave him at least two fake names. Officer D related he could not recall if it was Civilian 2 or Civilian 3 who gave him the fake names. Officer D related he heard a verbal argument between Subject 1 and the POs but did not hear any of the conversation. Officer D related he was absorbed with the female subject and did not see any physical contact between Officer A and Subject 1. Officer D related Officer A told him that he pushed Subject 1 into the car because Subject 1 would not go into the car willingly but Officer D did not see anything. Officer D reported Subject 1 was still combative at the station, with his demeanor going “up and down” from cooperative to combative. Officer D related at some point at that station lockup, Subject 1 threw his shoe. (Att. # 25)

On December 5, 2017 witness **Sergeant A, Star #XXXX, reported to COPA for an in-person interview.** Sgt. 1 related he responded to a call at Holstein Park where he witnessed four teenagers swimming in a pool. Sgt. 1 related the POs on-scene were issuing tickets to the four individuals caught swimming in the pool. Sgt. 1 related there was a scuffle between one PO, 1, Star #XXXX, and one subject, Subject 1. Sgt. 1 related he did not see or hear any of the scuffle between Officer A and Subject 1 because he was absorbed with one of the female subjects who was crying. Sgt. 1 stated he did not know if it was Civilian 2 (“Civilian 2”) or Civilian 3 (“Civilian 3”) that was crying. Sgt. 1 related Officer A reported to him that Subject 1 lunged at him and he accidentally struck Subject 1 in the head area, removing his hat, but Sgt. 1 did not see anything. When questioned about whether Officer A should have reported that he accidentally struck Subject 1 when Subject 1 allegedly lunged at him, Sgt. 1 related that since Officer A marked it on the OBR and summarized it in the incident and arrest report, it was not necessary to also mark it on the TRR. (Att. # 24)

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<sup>2</sup> The TRR completed by Officer A reports that he “physically pushed Subject 1 into the car.” When asked to clarify if “guiding Subject 1 into the car” he meant he “pushed” Subject 1 into the car, Officer A reported “yes.”

The **Body Worn Camera (“BWC”)** footage of witness **Sergeant A, Star #XXXX**, shows Officer D relating to Sgt. 1 that he is waiting on a call from Chicago Park District about whether they can come open the gate to let the subjects out of the pool area. The pool area is dark but four subjects can be seen, two males and two females. (Att. # 28)

The **Body Worn Camera (“BWC”)** footage of witness **Officer 4, Star #XXXXXX**, shows the four individuals in the pool area. It shows a female crying and providing her information to Officer D. It shows Subject 1 at the district lock up calling the officers a “jag off” and denying lunging at Officer A. (Att. # 28)

The **Body Worn Camera (“BWC”)** footage of accused officer **1, Star #XXXXXX**, begins with a shot of Subject 1 standing against a fence. Officer A then turns and walks to the police cruiser then quickly turns back toward Subject 1. Subject 1 is then seen leaning in slightly toward Officer A to which Officer A raises his right hand and slaps the head area of Subject 1. Officer C is seen immediately to Officer A’s left during the incident and assists in cuffing Subject 1. During the cuffing, Subject 1 is yelling “you just slapped me in the head, you dumb fuck, go ahead, lock it up, my aunt works at Cook County you dumb fuck, you’re fucked.” Subject 1 then resists going into the backseat of the transport vehicle and 1 quickly puts Subject 1 into the car but Subject 1 kicked the door open with his feet. Subject 1 then continues to scream “fuck you, you dumb bitch.” Officer A closes the police transport door and writes a citation. (Att. # 28)

The **Body Worn Camera (“BWC”)** footage of witness **Officer 2, Star #XXXXXX**, shows the individuals in the pool fence and shows the officers discussing how to safely get them out of the pool area. The body camera is shut off mid-incident. (Att. # 28)

The **Arrest Report** of Subject 1, CB XXXXXXXX, reports that on August 3, 3017, at 4:32 AM, at 2200 North Oakley Avenue, Subject 1 was arrested for Simple Assault and Criminal Trespass to State Land. The narrative portion of the arrest report states that Subject 1 became irate and lunged in officer’s direction as if to headbutt the officer. The narrative further states that this action placed the officer in fear of receiving a battery to which the officer responded by lifting his arm to ward off the assault the officers arm then knocked off the subject’s hat. When Subject 1 was taken into custody, the officers attempted to put Subject 1 into the transport vehicle and Subject 1 tensed his body which resulted in the officers having to physically push Subject 1’s legs and body into the vehicle. (Att. # 4)

The **Incident Report** of Subject 1, XXXXXXXX, reports that on August 3, 3017, at 4:32 AM, at 2200 North Oakley Avenue, reports that the officers responded to a call of criminal trespass and found four subjects swimming in the outdoor pool. The officers told the subjects to get out. The subjects got out and while the officers were issuing citations, one of the subjects, Subject 1, became irate and lunged at Officer A with his head. The offender was placed in custody and transported to the 014<sup>th</sup> district for processing. (Att. # 5)

The **Tactical Response Report** completed by Officer A, Star # XXXXX, reports that on August 3, 3017, at 4:32 AM, at 2200 North Oakley Avenue, Subject 1 was a passive resister by not following verbal direction and stiffening to which Officer A’s member response was member presence and verbal commands. Subject 1 then became an active resister by resisting entering the vehicle to which Officer A responded by physically pushing Subject 1 into the vehicle. Officer A also reported Subject 1 as an assailant by exhibiting an imminent threat of battery but no member response is reported in response to this threat. Subject 1 responded he was “fine” and refused medical attention in response to this use of force. (Att. # 6)

The **Officer's Battery Report** completed by Officer A, Star #XXXXXX, on August 3, 3017, at 4:32 AM, at 2200 North Oakley Avenue, Subject 1 attempted to head butt Officer A. (Att. # 7)

The **Initiation Report** of CR #XXXXXXXX from Lieutenant A, Star #XXX to District Commander A, reports that Subject 1 stated he was “fine” but that Officer A, Star #XXXXXX, had struck him in the head. Subject 1 refused medical treatment. No In-Car Camera was available. The body worn camera of the involved witness officers and sergeant did not capture the incident. Further, Lt. 1 was unable to ascertain from Officer A’s body worn camera if the incident had occurred. (Att. # 8)

The **Event Query** from the Office of Emergency Management and Communication reports that on August 3, 2017 at 4:00 AM, beats XXXX and XXXX responded to Holstein Park at 2200 N. Oakley for a call of criminal trespass. The call was cleared at 6:33 AM. (Att. # 9)

A **canvass** was conducted on October 6, 2017, at Holstein Park, Subject 1’s home, and Civilian 3’s home. Holstein Park reported no surveillance camera exists for the incident. Subject 1 and Civilian 3 were not home but information was left for them to contact COPA. COPA contacted Civilian 2 and Civilian 3 on several separate occasions and scheduled several different interviews with them throughout the month of October 2017. Neither Civilian 2 nor Civilian 3 ever showed for the interviews or called to reschedule. COPA was unable to interview either for this investigation. (Att. # 17)

The **Ticket # 7600** shows that on the night of August 3, 2017, PO Officer 3’s body camera was not working and a ticket for repair had been created. (Att. 31)

## ANALYSIS/CONCLUSION

### I. Officer A allegedly slapping complainant Subject 1 in the head during arrest.

Officer A related to COPA during his in-person statement that he moved to remove Subject 1’s hat with his right hand and accidentally struck Subject 1 in the left side of his head with an open hand. Officer A related that Subject 1 lunged at him and he was in fear of a battery because Subject 1’s hat bill had come into his personal space. Subject 1 denied lunging at Officer A. The body camera footage from Officer A indicates that 1 struck Subject 1 in the head area with his right hand when Subject 1 leans forward slightly into Officer A. The force used in response to Subject 1 leaning into Officer A was excessive per guidelines set forth by Chicago Police’s Use of Force Policy, G03-02-02.

According to General Order (“GO”) 03-02-01, the Chicago Police Department utilizes a Use of Force Model to provide guidance on the appropriate amount of force to be used to effect a lawful purpose. The model may progress from member presence to the application of deadly force. The primary objective of the use of force is to ensure control of a subject with the reasonable force necessary based on the totality of the circumstances. Department members must escalate or de-escalate the amount of force which is reasonably necessary to overcome the subject’s resistance and to gain control over the subject. GO 03-02-01 states that there are two types of resisters. A passive resister is defined by non-movement in response to verbal and other direction, and includes variable positioning. An active resister is defined by movement to avoid physical control and this can include “variable dynamics.” GO 03-02-02 further defines an active resister as “a person whose actions attempt to create distance between that person and the member’s reach with the intent to avoid physical control and/or defeat the arrest. This type of resistance includes gestures ranging

from evasive movement of the arm, through flailing arms, to full flight by running.” GO 03-02-01 and GO 03-02-02 further identify three categories of an assailant: A subject whose actions are aggressively offensive without weapons, a subject whose actions will likely cause physical injury with or without a deadly weapon, and a subject whose actions will likely cause death or serious physical injuries. GO 03-02-02 defines an assailant as “a subject who is using or threatening the imminent use of force against himself/herself or another person.”

Subject 1 leaned forward only slightly; Subject 1 did not lunge at Officer A. Officer A described being in “imminent threat of a battery” however, Subject 1’s actions depicted on the body worn camera of Officer A do not depict Subject 1 “lunging” and therefore no threat of a battery existed and Officer A’s slapping Subject 1 in the head was unjustified. Further, as can also be seen on Officer A’s body worn camera footage, Officer A deliberately struck the head of Subject 1, rather than putting his arm up in defense of a battery as he reported in his interview. Therefore, the recommended finding for Allegation #1, that Officer A slapped complainant Subject 1 in the head during arrest, is **Sustained**.

**II. Officer A failed to properly document all physical contact made with arrestee Subject 1 on accused PO's Tactical Response Report (TRR).**

Officer A related to COPA during his in-person statement that he possibly did not properly document the physical contact with Subject 1’s head as an “oversight.” Officer A further stated that he believed the contact was not used while effecting an arrest and was not a “tactical” maneuver and therefore did not need to be documented. Officer A reported he “feared he was in imminent threat of a battery” when Subject 1 “lunged” at Officer A. Per guidelines set forth by Chicago Police’s Use of Force Policy, G03-02-02, incidents requiring the completion of a Tactical Response Report include: a subject who is injured or alleges injury resulting from the member’s use of a force option, the active resistance of a subject, an act of obstructing a police officer when the obstructing is a physical act directed at the Department member, as well as when a subject whose actions are aggressively offensive, with or without weapons, or who is using or threatening the imminent use of force against the member that will likely cause physical injury. Therefore, the recommended finding for Allegation #2 that Officer A, failed to properly document all physical contact made with arrestee Subject 1 in a Tactical Response Report (TRR), is **Sustained**.

**III. Officer B deactivated body camera during the incident.**

Per guidelines set forth by Chicago Police’s Body Worn Cameras Policy, S03-14, an officer cannot deactivate the recording of an incident until “the entire incident has been recorded and the member is no longer engaged in a law-enforcement-related activity.” PO Officer 2 related that she “thought the investigatory stop was complete.” The stop was not complete. Had PO Officer 2 continued to record, she would have captured when the individuals involved in the incident climbed over the fence, as well as the contact between Subject 1 and Officer A and Subject 1’s subsequent arrest. Therefore, the recommended finding for Allegation #1 that PO Officer 2 deactivated her Body Worn Camera during the incident, is **Sustained**.

**IV. PO Officer 3 failed to report the misconduct (slapping Subject 1 in the head) of Officer A, Star #XXXXXX, which she witnessed on during the arrest of Subject 1.**

The body camera recording from Officer A shows Officer C within inches of Officer A when Officer A struck Subject 1 in the head. However, Officer C reported she did not recall seeing Officer A strike Subject 1 on the head. Officer C also reported she did not understand the allegation that she failed to report the misconduct because Officer C did not know what misconduct was alleged. Officer C was within inches of Officer A when Officer A struck Subject 1 and assisted in handcuffing Subject 1. Officer C failed to report the conduct she witnessed which is a violation of Chicago Police Department Rule 22 “Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.” It is implausible that Officer C did not witness the excessive force based on Officer C’s close proximity to Officer A. Officer C can be seen within inches of 1 approximately one second after Officer A struck Subject 1 in the head using excessive force. Therefore, the recommended finding for Allegation #1 that PO Officer 3 failed to report the misconduct of Officer A, which she witnessed during the arrest of Subject 1, is **Sustained**.

#### V. PO Officer 3 failed to activate her Body Worn Camera

Officer C provided COPA with paperwork documenting the body worn camera that was assigned to her was in for repair on August 3, 2017, and a ticket for service had been created. Therefore, the recommended finding for Allegation #2 that PO Officer 3 failed to activate her Body Worn Camera on August 3, 2017 at 4:32 AM, at 2200 N. Oakley Ave. is **Exonerated**.